

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 FAMILY AND ADULT SERVICES DIVISION

CHAPTER 601

CONFIDENTIALITY

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Historical Note: This chapter is based substantially upon Rule 1 §§2200-2200.10 [Eff as Rule 58 §§2200-2200.10 9/20/76; ren to Rule 1 10/31/78; am 2/9/78; am 9/21/78; am 10/5/78; R 7/19/82]

§17-601-1 Purpose. The purpose of this chapter shall be to define the conditions under which the department of human services, family and adult services division (DHS-FASD), may disclose information relating to applicants and recipients of financial assistance, food stamps, child support, and social service programs. [Eff 7/19/82; am and comp 3/19/93; am 8/1/94] (Auth: HRS §§346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§346-10, 346-14; 45 C.F.R.

§§205.50, 1391.3; 42 C.F.R §§431.300, 431.301, 431.302;
7 C.F.R. §272.1(c))

§17-601-2 Maintenance of records. (a) The department of human services, family and adult service division (DHS-FASD), shall keep records to document information acquired about applicants and recipients in the administration of social services, financial assistance and food stamp programs.

(b) This information shall:

- (1) Substantiate the expenditure of public funds;
- (2) Be kept in confidential records and files of the DHS-FASD; and
- (3) Not be subject to any other law permitting inspection of public records.

(c) The applicant or recipient shall have a right to privacy and shall be informed in writing about the confidential nature of the information acquired, except as noted in section 17-601-3(c). [Eff 7/19/82; am and comp 3/19/93; am 8/1/94] (Auth: HRS §§346-10, 346-14) (Imp: HRS §346-10; 45 C.F.R. §§205.50, 205.60, 1391.3; 42 C.F.R. §431.17)

§17-601-3 Restrictions against disclosure of information to persons other than applicants and recipients. (a) This section does not apply to:

- (1) Individuals receiving social services under chapter 17-920.1, which have disclosure provisions applicable to those individuals; or
- (2) Information which identifies any individual who has or has been tested for HIV/AIDS. Disclosure provisions as specified in section 17-601-3.01 shall apply to those individuals.

(b) The following information shall be confidential and shall not be used or disclosed except as provided in subsection (c):

- (1) Names and addresses of applicants and recipients, and amounts of assistance provided. This includes prohibition against release of information to any federal, state, or local committee or legislative body;

- (2) Information related to the social and economic condition or circumstances of a particular individual, whether or not an applicant or recipient, including wage information obtained from the state department of labor or from Social Security Administration;
- (3) DHS-FASD's evaluation of recorded or unrecorded information about a particular individual, whether or not an applicant or recipient;
- (4) Medical, psychological, or psychiatric data, including diagnosis and past history of disease or disability of a particular individual, whether or not an applicant or recipient;
- (5) Correspondence concerning a particular individual, whether or not an applicant or recipient; and
- (6) The name of the worker or unit in which the case is or was active.

(c) The use or disclosure of any of the information specified in subsection (b) shall be limited to the following persons or purposes and, unless otherwise stated, this excludes inspection of the entire case record:

- (1) Disclosure for purposes directly connected with the administration of social services, financial assistance, and food stamp programs;
 - (A) Only the employees of the DHS-FASD and the United States government in the performance of the employees' official duties shall have access to the entire case record;
 - (B) Disclosure shall be allowed to the extent necessary to provide services and to determine eligibility or amount of assistance for applicants or recipients under the social services, financial assistance and food stamp programs identified in sections 17-601-1 or 17-1702-1;
 - (C) Under this paragraph, disclosure to the following agencies shall be permitted:

- (i) Private social service agencies, including purchase of service (POS) providers, from which the applicant or recipient receives services according to a DHS-FASD case plan; and
 - (ii) Agencies administering programs under the Social Security Act under such titles as XVI-SSI (42 U.S.C. §§1381-1383), IV-A AFDC (42 U.S.C. §§601-610), XX-social services (42 U.S.C. §1397);
- (2) Disclosure for purposes directly connected with any investigation, prosecution, or criminal or civil proceedings conducted in connection with the administration of the social services, financial assistance and food stamp programs identified in section 17-601-1. Under this paragraph, disclosure shall be permitted:
 - (A) To police departments, prosecutors' offices, the attorney general's office, the ombudsman's office, or any other state or federal agency; and
 - (B) For such purposes as:
 - (i) The detection, investigation or prosecution of violations of applicable state and federal laws or regulations in connection with these programs, including any and all aspects of theft, fraud, deception, or overpayment;
 - (ii) DHS-FASD's claims against estates of deceased recipients, or initiation of paternity and nonsupport actions by DHS-FASD under title IV-D of the Social Security Act (42 U.S.C. §§651-662);
 - (iii) Responding to requests for information in connection with lawsuits challenging the administration of social services, financial assistance or food stamp programs; and

- (iv) Providing information to the ombudsman's office investigating complaints about the administration of social services, financial assistance and food stamp programs;
- (3) Disclosure for purposes of the administration of other federal or federally assisted programs which provide assistance, in cash or in kind, or services directly to individuals on the basis of need. Under this paragraph disclosure shall be permitted for purposes of administering programs such as:
 - (A) Social security - supplemental security income; and
 - (B) Hawaii housing authority for the section 8 programs and the low income housing projects;
- (4) Disclosure to banks, financial institutions or any other payor of a social services or financial assistance warrant or check. Under this paragraph, disclosure shall be limited to information indicating that a public assistance warrant or check honored by the bank, institution, or payor has been forged or otherwise wrongfully presented for payment;
- (5) Disclosure to the state department of labor and industrial relations or other certifying agency that an individual has been an aid to families with dependent children recipient for at least ninety days pursuant to Pub. L. No. 97-34, the Economic Recovery Tax Act of 1981 (42 U.S.C. §601);
- (6) Disclosure for purposes of an audit or similar activity, such as a financial review or review of expenditure reports, conducted in connection with the administration of the social services, financial assistance or food stamp programs by any governmental entity which is authorized by law to conduct the audit or activity;
- (7) Disclosure to state or county law enforcement officers of the current residence and business address of a recipient, when the information is needed for:

- (A) An official administrative, civil, or criminal law enforcement purpose to identify a recipient as a fugitive felon or parole violator; or
 - (B) An official purpose and the department has informed the recipient of the circumstance in which the recipient's address may be released;
- (8) Disclosure to individuals or agencies other than those specified in paragraphs (1) to (7) only when a written authorization has been obtained from the applicant, the recipient, or the legal guardian of the applicant or recipient. The written authorization shall specifically include the applicant's, recipient's, or legal guardian's consent to have the information released or the record reviewed;
 - (A) When individuals other than applicants, recipients, or legal guardians of applicants or recipients wish to obtain information, or to review a DHS-FASD record, the individual shall submit a statement, signed and dated by the applicant, recipient, or legal guardian of the applicant or recipient specifying:
 - (i) The name of the individual authorized to receive the information or to review the record, and the individual's agency connection, if any;
 - (ii) The specific information the DHS-FASD is authorized to release and the purpose for which the information is being sought;
 - (iii) Applicant or recipient's social security number or birth date, and address; and
 - (iv) Specific period of time the authorization is valid, not to exceed ninety days;
 - (B) Reproduced copies of information requested shall be provided at a cost related to the cost of reproduction.

When the information is required for the purpose of presenting the applicant's or recipient's fair hearing appeal, there shall be no charge. In either case, actual postage cost shall be charged; and

- (9) Disclosure to employees of a recognized social welfare organization. Under this paragraph, disclosure shall be permitted only for applicants or recipients of purely state-funded social services or financial assistance and only to facilitate the social welfare organization's provision of services to the applicants or recipients.
 - (10) Disclosure to persons directly connected with the administration or enforcement of programs which are required to participate in the State income and eligibility verification system (IEVS). Information disclosed shall be limited to that which is required to enable IEVS operations and shall be protected from unauthorized disclosure as required by the rules established by the information provider.
 - (11) For the food stamp program, disclosure to any federal, state or county law enforcement officer of the address, social security number, and, if applicable, photograph of a food stamp recipient if the officer furnishes the recipient's name and notifies the department that the individual:
 - (A) Is fleeing to avoid prosecution, custody, or confinement for a felony;
 - (B) Is violating a condition of parole or probation; or
 - (C) Has information necessary for the officer to conduct an official duty related to a felony for parole violation.
- (d) The release or use of information concerning individuals applying for or receiving assistance or services from social services, financial assistance or food stamp programs identified in section 17-601-1 shall be:
- (1) Limited by the provisions of subsection (c);

(2) Limited to the purposes for which they are furnished; and

(3) Subject to the standards of confidentiality of this chapter.

(e) The case record or information shall not be released in a judicial or administrative proceeding, either voluntarily or in response to any subpoena unless permitted by subsection (c). This includes requests or subpoenas from a governmental authority, the courts, a law enforcement official, the ombudsman's office, the attorney general's office, or from any other outside source.

(f) The provisions of this section shall not apply to the disclosure of information, documents, and records relating to adoption or child abuse filed in court. Provisions for disclosure of information, documents, and records relating to adoption or child abuse are specified in section 17-601-5.

(g) Where disclosure is not permitted for the purpose of the administration of the social services, financial assistance and food stamp programs, the family or individual shall be informed whenever possible of a request for information from an outside source, and permission shall be obtained to meet the request. In an emergency situation, when the individual's consent for the release of information cannot be obtained, the individual shall be notified immediately. [Eff 7/19/82; am 6/6/83; am 7/23/84; am 4/20/85; am 9/29/86; am 10/5/91; am and comp 3/19/93; am 8/1/94; am 10/28/96; am 9/26/97] (Auth: HRS §§92F-26, 346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§92-21, 92F-14; 346-10, 571-84; 45 C.F.R. §205.50; Pub. L. No. 104-193 (1996))

17-601-3.01 Restrictions against disclosure of information relating to HIV/AIDS. (a) This section does not apply to individuals receiving social services under chapter 17-920.1.

(b) In accordance with section 325-101, HRS, all records including all communication, or specific medical or epidemiological information contained therein, which identify any individual who has or has been tested for HIV/AIDS, shall be released:

- (1) Only with the prior written consent of the person or persons to whom the records pertain:
 - (A) When individuals other than applicants, recipients, or legal guardians of applicants or recipients wish to obtain information, or to review a DHS-FASD record, the individual shall submit a statement, signed and dated by the applicant, recipient, or legal guardian of the applicant or recipient specifying:
 - (i) The name of the individual authorized to receive the information or to review the record, and the individual's agency connection, if any;
 - (ii) The specific information the DHS-FASD is authorized to release and the purpose for which the information is being sought;
 - (iii) The applicant or recipient's social security number or birth date, and address; and
 - (iv) Specific period of time the authorization is valid, not to exceed ninety days;
 - (B) Reproduced copies of information requested shall be provided at a cost related to the cost of reproduction. When the information is required for the purpose of presenting the applicant's or recipient's fair hearing appeal, there shall be no charge. In either case, actual postage cost shall be charged.
- (2) Pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking the release of records. [Eff 8/1/94] (Auth: HRS §325-101) (Imp: HRS §325-101)

§17-601-4 Disclosure of information to applicants or recipients. (a) Case records shall be reviewed

only in designated areas within the DHS-FASD's offices. The records shall not be removed from the premises.

(b) The provisions of this section shall not apply to the disclosure of information, documents, and records relating to adoption or child abuse filed in court. Disclosure in these instances shall be subject to the provisions of section 17-601-5.

(c) Information from records shall be released to the applicant, recipient, authorized representative of the applicant or recipient, or legal guardian of the applicant or recipient upon the individual's request provided that a signed and dated written request is received stating specifically:

- (1) What information is desired; and
- (2) Whether the information is desired verbally, through review, or by receipt of reproduced copies of the information requested at a cost related to the cost of reproduction and postage, if any. When copies of information are requested for the purpose of presenting the applicant's or recipient's hearing appeal, there shall be no charge for reproduction.

(d) DHS-FASD shall permit the applicant, recipient, or legal guardian of the applicant or recipient to review the record or receive a copy of the information requested within ten working days of the date the written request is received. When the ten day time limit cannot be met because of unusual circumstances, the time period may be extended for twenty additional days if:

- (1) DHS-FASD provides a written explanation of the delay to the individual; and
- (2) The written explanation is provided within the initial ten working day period.

(e) When the information requested contains or consists of coded or abbreviated material such as computer input and output forms, DHS-FASD shall provide translations of the codes or abbreviations, if requested.

(f) This section does not apply to individuals receiving social services under chapter 17-920.1. [Eff 7/19/82; am 6/6/83; am 7/23/84; am 10/5/91; am and comp 3/19/93] (Auth: HRS §§92F-26, 346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§92-21, 92F-21, 92F-22,

92F-23, 92F-24, 92F-25, 346-10, 346-14(10), 571-84; 45 C.F.R. §205.50)

§17-601-5 Restrictions against disclosure of family court related material. (a) All information, documents, and records relating to an adoption and filed in court shall be confidential and shall not be released by the DHS-FASD to an applicant, recipient, or legal guardian of the applicant or recipient, or to a third party with or without a written authorization.

(b) Access to documents and records relative to court proceedings brought under section 571-11, HRS, shall be limited by the following:

- (1) Social records filed in the court shall not be disclosed. Persons seeking such information shall be referred to the family court;
- (2) All other documents and records shall be open to inspection only by the following persons:
 - (A) The parties and their attorneys;
 - (B) An institution or agency to which custody of the minor has been transferred;
 - (C) An individual who has been appointed legal guardian; and
 - (D) By court order, to persons, institutions, agencies having legitimate interest in the protection, welfare, or treatment of the minor; and
- (3) Documents and records include:
 - (A) Court docket;
 - (B) Petition, complaint;
 - (C) Motions;
 - (D) Transcripts of testimony;
 - (E) Court orders;
 - (F) Findings and decree; and
 - (G) Other papers held in the case. [Eff 7/19/82; am and comp 3/19/93] (Auth: HRS §§346-10, 346-14) (Imp: HRS §§346-14, 571-84)

§17-601-6 Applicant's and recipient's right to correct case record. (a) Each applicant and recipient

shall have the right to have any factual error in the individual's case record corrected and any misrepresentation or misleading entry in the record amended by the DHS-FASD.

(b) The applicant or recipient shall make the request in writing specifying the information the individual wishes corrected and the reason why.

(c) Within twenty working days after the receipt of the written request, the DHS-FASD shall acknowledge the request in writing and:

- (1) Make the requested correction or amendment. The correction or amendment shall consist of a marginal notation:
 - (A) Stating that the information has been amended; and
 - (B) Referring to the written request for the correction or amendment which is filed in the case record; and
- (2) Inform the individual in writing if the information is not to be corrected or amended, the reason for the refusal, and the individual's right to request a review of the refusal by the director or the director's designee.
 - (A) DHS-FASD shall make a final determination within twenty working days of the date the written request for review of the refusal to amend the information is received by DHS-FASD.
 - (B) If the final determination is that the correction or amendment shall not be made, DHS-FASD shall:
 - (i) Inform the individual in writing of the final determination;
 - (ii) Allow the individual to file a concise statement specifying the reasons for the individual's disagreement with the final determination; and
 - (iii) Inform the individual of the individual's right to civil action against DHS-FASD through the state circuit courts within two years after the individual's last written communication requesting the

amendment. [Eff 07/19/82; am and comp 3/19/93] (Auth: HRS §§92F-26, 346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS 92F-24, 92F-25)

§17-601-7 Dissemination of material. All material sent or distributed to applicants, recipients, or medicaid providers, including material enclosed in envelopes containing checks, shall be limited to the administration of social services, financial assistance and food stamp programs specified in section 17-601-1.

- (1) Mailing or distribution of holiday greetings, general public announcements, voting information, and alien registration notices shall be prohibited.
- (2) Material relating to the health and welfare of applicants and recipients, such as announcement of free medical exams, availability of surplus food, and consumer protection information may be mailed or distributed.
- (3) Only the names of the persons directly connected with the administration of the social services, financial assistance and food stamp programs and identified in an official capacity with the DHS-FASD shall be contained in material sent or distributed to applicants, recipients, and providers. [Eff 7/19/82; am and comp 3/19/93; am 8/1/94] (Auth: HRS §§346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§346-10, 346-14; 45 C.F.R. §§205.50, 1391.3; 42 C.F.R. §307)

§17-601-8 Penalty. (a) Any person who fails to safeguard confidential information or who violates rules governing the confidential nature of DHS-FASD information may be prosecuted for a violation. Violators shall include, but shall not be limited to:

- (1) Any person, including any person who acquires information through authorized inspection, who, knowing the information to have been acquired from the records or files of the department, intentionally divulges the

information other than as authorized by law;
and

- (2) A person who intentionally and knowingly aids or abets an unauthorized person in the inspection of the records or files.

(b) If the court determines that DHS-FASD acted in a wilful and intentional manner in failing to properly maintain the case record, the provisions of section 92F-27, HRS, shall apply. [Eff 07/19/82; am and comp 3/19/93] (Auth: HRS §§346-10, 346-14; 45 C.F.R. §205.50) (Imp: HRS §§92F-27, 346-11, 346-14; 45 C.F.R. §§205.50, 1391.3)

§17-601-9 REPEALED [R 10/5/91]